Supreme Court, U.S.
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No. 99-1684

IN THE

Supreme Court of the United States

RICHARD STEHLIK,

Petitioner,

v.

RANDALL A. CHARLES,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

RESPONDENT'S BRIEF IN OPPOSITION

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COUNTER-STATEMENT OF THE CASE

A Petition for a Writ of Certiorari is filed by Richard Stehlik (Stehlik) from an Order of the Supreme Court of Pennsylvania, affirming prior decisions of the Superior Court of Pennsylvania and the Court of Common Pleas of Allegheny County, awarding primary custody of Matthew G. Stehlik (hereinafter referred to as Matthew) to Matthew's step-father, Randall Charles (Charles). Charles wishes to offer his own concise counter-statement of the case.

Matthew was born March 3, 1989, [R.R. 321a], to Stehlik and his wife, Linda. Stehlik and Linda had married on December 6, 1986. [R.R. 311a]. Linda had two children from a previous marriage, Kim and Kevin. [R.R. 312a-313a]. The family lived in Stehlik's house in New Jersey. [R.R. 312a]. According to Stehlik's testimony, he and Linda separated on August 29, 1989, [R.R. 311a], less than six months after Matthew's birth. Their divorce was finalized on July 20, 1990. [R.R. 311a].

Charles met Linda after she had separated from Stehlik and moved from New Jersey to the Pittsburgh area. [R.R. 148a]. By February or March of 1990, Charles was assisting Linda in taking care of Matthew, as well as Kim and Kevin. [R.R. 155a]. Charles and Linda married on July 21, 1990. [R.R. 154a]. Their household consisted of Charles, Linda, Matthew, Kim, Kevin, and Charles' daughter Jennifer. [R.R. 156a].

On September 4, 1995, Linda died. [R.R. 6a]. A few days later, Charles initiated this custody proceeding by filing a petition seeking primary custody of Matthew with the Court of Common Pleas of Allegheny County. The custody petition

was assigned to the Honorable Ronald W. Folino, who issued an Order on September 15, 1995, granting temporary custody of Matthew to Charles. Judge Folino also ordered evaluations of Charles, Stehlik and Matthew by William F. Fischer, Ph.D. Charles' custody petition was the subject of extensive hearings held on August 15 and 16, 1996, December 12, 13, and 26, 1996, and January 23, 1997. Throughout these six days of hearings Judge Folino heard testimony from a number of witnesses.

On February 26, 1997, Judge Folino issued an Order granting Charles primary custody of Matthew, and granting Stehlik partial custody with an extensive visitation schedule as set forth in the Order. Stehlik appealed to the Superior Court of Pennsylvania. By Order dated January 9, 1998, the Superior Court affirmed the custody order of the trial court. Stehlik petitioned the Superior Court for reconsideration on January 23, 1998, which application was denied by Order dated March 13, 1998. Stehlik then filed a Petition for Allowance of Appeal with the Supreme Court of Pennsylvania. On January 19, 2000, the Supreme Court of Pennsylvania issued an Opinion and Order affirming the custody award of Matthew to Charles. Stehlik now Petitions this Honorable Court for Writ of Certiorari.

REASONS FOR DENYING THE WRIT

I.

THE THREE PENNSYLVANIA COURTS WHICH HAVE CONSIDERED THIS MATTER HAVE CORRECTLY APPLIED PENNSYLVANIA LAW.

Under Pennsylvania law, the scope of appellate review in a child custody matter is of the broadest type. *Lombardo v. Lombardo*, 515 Pa. 139, 527 A.2d 525 (1987). However, the appellate court's broad scope of review does not vest the reviewing court with the privilege or power to make its own independent determination. "[T]his broader power of review was never intended to mean that an appellate court is free to nullify the fact-finding function of the hearing judge." *Lombardo*, 515 Pa. at 147, 527 A.2d at 529, quoting *Commonwealth ex rel. Spriggs v. Carson*, 470 Pa. 290, 295, 368 A.2d 635, 637 (1977).

The Trial Court and the Superior Court of Pennsylvania both properly and correctly applied Pennsylvania law in this custody proceeding. While recognizing that Matthew's natural father has a prima facie right to custody under Pennsylvania law, Judge Folino found compelling and convincing reasons for awarding primary custody of Matthew to Charles, which reasons are spelled out in Judge Folino's Opinion. [Petition Appendix 26a-37a] After an examination of the record on appeal, the Superior Court affirmed. [*See* Petition Appendix 19a-20a].

Further review of the record by the Supreme Court of Pennsylvania resulted in an affirmance of the previous court orders granting primary custody of Matthew to Charles. Moreover, the Supreme Court of Pennsylvania upheld these previous court determinations awarding primary custody of Matthew to Charles with a published Opinion that reaffirms the legal standard used by both the Trial Court and the Superior Court in this case. [*See* Petition Appendix 1a-13a].

Pennsylvania law, as announced by the Supreme Court of Pennsylvania, recognizes a prima facie right to custody for biological parents as against third parties. *Ellerbe v. Hooks*, 490 Pa. 363, 416 A.2d 512 (1980); *J.A.L. v. E.P.H.*, 453 Pa. Super. 78, 682 A.2d 1314 (1996). Pennsylvania law provides further that in a custody contest involving a biological parent and a third party, such as a step-parent, the biological parent's *prima facie* right to custody will be forfeited only where the court finds that there exist convincing reasons why the best interests of the child will be served by an award of custody to the third party. *Ellerbe v. Hooks*; *In re Hernandez*, 249 Pa. Super. 274, 376 A.2d 648 (1977). Furthermore, Pennsylvania law recognizes that the paramount consideration in a custody dispute between a natural parent and a non-parent is the best interest of the child, *Karner v. McMahon*, 433 Pa. Super. 290, 640 A.2d 926 (1994).

The Supreme Court of Pennsylvania, in its *Charles v. Stehlik* Opinion [Petition Appendix 1a-13a], reaffirmed the validity of the above-stated principles as the appropriate legal standard to be used in child custody cases. Moreover, the Supreme Court of Pennsylvania held that the legal standard had been applied appropriately in the present case, thus affirming the award of primary custody of Matthew to Charles.

II.

THE CASE AT BAR IS CONTROLLED BY PENNSYLVANIA LAW.

The United States Supreme Court has consistently refused to issue a Writ of Certiorari unless a Federal question has been both raised and decided in the state court. *Illinois v. Gates*, 462 U.S. 213, *rehearing denied*, 463 U.S. 1237 (1983); *see also* 28 U.S.C. § 1257. A review of the three previous court opinions in this case clearly shows that all three rulings are based on Pennsylvania law, as pronounced in case law by the Supreme Court of Pennsylvania and the Superior Court of Pennsylvania.

Stehlik's Petition for Writ of Certiorari makes reference to the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution. None of the three previous court opinions in this case are premised on, nor even reference, the Fourteenth Amendment to the United States Constitution, or any other provision of the United States Constitution or Federal law. Never in the proceedings below did Stehlik raise the question, nor did the Courts decide the question he presented by his Petition. [*See* Petition Appendix 17a].

Stehlik's Petition for Writ of Certiorari also makes reference to rulings by this Honorable Court that the right to conceive and raise children is deemed an essential basic right of man, citing *Stanley v. Illinois*, 405 U.S. 645 (1972), and *Prince v. Massachusetts*, 321 U.S. 168 (1944). Stehlik thus infers that the rulings of the three Pennsylvania courts which have reviewed this custody petition are somehow in conflict with this principle. The inference is simply untrue. None of

the three Pennsylvania courts which have ruled on Charles' custody petition have made any pronouncement which could be read or interpreted as denouncing or disregarding the right to conceive or raise children. The proposition on which Stehlik seems to rely is that the right to conceive and raise children makes it impossible for a court to award custody of a child to anyone other than a biological parent. Stehlik has not, and cannot, point to any legal authority which would support this specious argument. Further, no one is limiting or destroying the relationship between Stehlik and his child. He was awarded liberal partial custody. Charles has not tried to terminate Stehlik's parental rights. Charles merely sought to obtain primary custody as this is what was in the best interest of the minor child.

Finally, Stehlik points in his Petition to several other jurisdictions which require a finding that a natural parent is unfit before custody of a child may be awarded to a third party. Stehlik argued to the Supreme Court of Pennsylvania that this same legal standard, requiring a finding that a natural parent is unfit before awarding custody to a third party, should be adopted by Pennsylvania. The Supreme Court of Pennsylvania declined to adopt the legal standard advocated by Stehlik. It should be noted that this was argued by Stehlik in his brief to the Supreme Court of Pennsylvania, but not preserved below or decided by the lower Courts. Stehlik has not explained how or why Federal law or the United States Constitution requires adoption of the legal standard he advocates. With all due respect to this Honorable Court, it is not the province of the United States Supreme Court to decide what Pennsylvania law on this question should be. The Supreme Court of Pennsylvania did not commit constitutional error simply by declining to adopt a legal standard used in other States. In fact, in *Albright v.*

Commonwealth, ex rel. Fetters, 491 Pa. 320, 421 A.2d 157 (Pa. 1980), the Supreme Court of Pennsylvania specifically declined to adopt the standard of some of the sister states requiring evidence of parental fitness. Then in *Charles v. Stehlik* the Supreme Court of Pennsylvania held that it saw no reason to abandon its holding in Albright. The Court noted that "the cardinal concern in all custody cases is the best interest and permanent welfare of the child." (*Citing Albright*, 421 A.2d at 158).

> In staying true to that maxim, we have decreed that there will be instances where it is proper to award custody to the third party even where there has been no showing that the biological parent is unfit. While this Commonwealth places great importance on biological ties, it does not do so to the extent that the biological parent's right to custody will trump the best interests of the child. In all custody matters, our primary concern, is and must continue to be, the well-being of the most fragile human participant — that of the minor child. We therefore reject Appellant's argument.

III.

THE TRIAL COURT THOROUGHLY REVIEWED THE EVIDENCE OF RECORD, MADE CREDIBILITY DETERMINATIONS, AND SET FORTH CONVINCING REASONS WHY CUSTODY OF MATTHEW SHOULD BE AWARDED TO HIS STEP-FATHER, CHARLES.

Absent an abuse of discretion, a reviewing court under Pennsylvania law may not reverse the decision of a trial judge who has made a complete and thorough record, and whose comprehensive opinion contains a thorough analysis of the record and sets forth specific reasons for the ultimate decision of the trial court. *In re Arnold*, 286 Pa. Super. 171, 428 A.2d 627 (1984).

Stehlik charges that the decisions below fail to set forth the specific compelling reasons that it found to support its conclusion that awarding primary custody to Charles is in Matthew's best interest. A review of the record shows this charge to be untrue.

Judge Folino, after referencing the legal standard discussed in Part I of this Brief, clearly states in his Opinion, "Despite this standard in favor of Mr. Stehlik [the biological parent of Matthew], the instant case offers compelling and convincing reasons why Mr. Charles should nevertheless retain primary custody of Matthew at the present time." [Petition Appendix 35a].

Judge Folino's Opinion discusses in detail the testimony presented at the six days of hearing in this case. [Petition Appendix 29a-35a]. Judge Folino chose which witnesses to focus on, and also made numerous credibility determinations

as to the witnesses. A reviewing court must defer to the trial judge on issues of credibility and the weight to be given to evidence. *Robinson v. Robinson*, 538 Pa. 52, 645 A.2d 836 (1994). "It is a principle which runs through all our cases that the credibility of witnesses and the weight to be given to their testimony by reason of their character, intelligence, and knowledge of the subject can best be determined by the judge before whom they appear." *Lombardo*, 527 A.2d at 529, quoting *Commonwealth ex rel. Spriggs v. Carson*, 368 A.2d at 637. The Pennsylvania Supreme Court has cited with approval the Superior Court's recognition that "the trial judge is in a position to evaluate the attitudes, sincerity, credibility, and demeanor of the witness. *Commonwealth ex rel. Rainford v. Cirrilo*, 222 Pa. Super. 591, 597-598, 296 A.2d 838, 841 (1972), cited by *Lombardo*, 527 A.2d at 529. Accordingly, under Pennsylvania law the reviewing court may not reverse or interfere with the decision of the hearing judge in a custody matter unless it finds a "gross abuse of discretion," *Lombardo*, 527 A.2d 529, or finds that "the custody order is 'manifestly unreasonable as shown by the evidence of record. . . .' " *Robinson*, 645 A.2d at 837, *citing Mumma v. Mumma*, 380 Pa. Super. 18, 21, 550 A.2d 1341, 1343, *appeal denied*, 524 Pa. 629, 574 A.2d 70 (1990).

Judge Folino discussed in detail the opinions and testimony of the court-appointed psychologist, Dr. Fischer, who evaluated Stehlik, Charles and Matthew. Judge Folino characterized Dr. Fischer as "an experienced clinical psychologist with impressive academic and professional credentials." [Petition Appendix 29a]. Pennsylvania law recognizes that the paramount consideration in a custody dispute between a natural parent and a non-parent is the best interest of the child, *Karner v. McMahon*, 433 Pa. Super. 290, 640 A.2d 926 (1994); in the present case Judge Folino

found that Dr. Fischer "testified credibly and persuasively that it is in Matthew's best interest to remain in the primary custody of Mr. Charles." [Petition Appendix 29a]. Judge Folino's findings are borne out by an examination of Dr. Fischer's testimony.

During the hearings of August 15 and 16, 1996, Dr. Fischer discussed his interviews and observations of Matthew, Stehlik and Charles, which took place over a period of about four weeks in November and December of 1995. [*See* Plaintiff's Exhibit 1, S.R.R. 1b]. Dr. Fischer testified first about his observations from his joint interview of Matthew and Stehlik, "Matt was very stiff. . . . He was very stiff and very uptight. . . . Mr. Stehlik was looking very lovingly at his boy. Matt was not looking at his father. He was looking straight ahead at me." [R.R. 36a-37a]. Indeed, Dr. Fischer testified that at one point during this meeting, after Stehlik left the room, Matthew spontaneously told Dr. Fischer that he wanted to live with Charles. [R.R. 38a-39a]. Dr. Fischer also testified about pictures drawn by Matthew during this visit with Stehlik, as a psychological test, which Dr. Fischer characterized as "angry, unhappy productions." [R.R.37a-38a].

Dr. Fischer then testified about his interview of Matthew with Charles and Charles' daughter Jennifer. Dr. Fischer described Matthew as being "much more cheerful, relaxed, than he had been previously" in his visit with Stehlik. [R.R. 41a]. On this visit Matthew "drew a much more cheerful picture," [R.R. 43a], and again made a spontaneous comment to Dr. Fischer in which he expressed his desire to live with Charles and Jennifer. [R.R. 43a].

Based on the information he obtained through those interviews and observations, Dr. Fischer opined, "From my perspective, for the best interest of Matt, I would have him stay with Mr. Charles. . . . I feel very strongly that the relationship to Mr. Stehlik should be encouraged. . . . But certainly for right now I think Matt should be with Mr. Charles." [R.R. 32a; *see also* 41a]. Dr. Fischer explained the rationale behind his opinion:

> Mr. Charles certainly has more parenting experience with Matt, more knowledge of Matt. . . . Mr. Charles has been the nuts and bolts father. He has been the father. I think he understands who Matt is and how Matt is, and he — I think Matt is clearly more at home with him. In that sense he is more able, I think, to give to Matt and raise Matt.

[R.R. 118a]. Reflecting on the death of Matthew's mother Linda, and the loss of his daily contact with Kevin and Kim when they went to live with their biological father after Linda's death, Dr. Fischer also expressed concern that Matthew "is suffering with all kinds of losses already. He doesn't need anymore." Dr. Fischer opined that Matthew is and will be "for some time to come extremely sensitive to loss." [R.R. 86a]. Dr. Fischer further opined:

> a seven-year-old boy is not going to understand that his biological father out of love for him is literally uprooting him from the only home he really knows. He is not going to understand that . . . most likely he will experience it as a punishment, as well as an uprooting. And he will be angry at Mr. Stehlik.

[R.R. 95a].

Dr. Fischer interviewed Matt again on December 31, 1996, and interviewed Stehlik again on January 10, 1997. [*See* Plaintiff's Exhibit 20, S.R.R. 16b; *see also* R.R. 533a]. Dr. Fischer testified that after these subsequent interviews with Matthew and Stehlik, "I remain firm in my conviction that Matt should live with Mr. Charles and his family." [R.R. 535a]. Dr. Fischer testified that during his December 31, 1996 meeting with Matthew, "[h]e looked me directly in the eye and face, and he said, 'Please tell the Judge that I want to stay here,' indicating that he wanted to stay in Pittsburgh." [R.R. 543a]. Asked by Judge Folino to summarize his reasons for his recommendation, Dr. Fischer testified:

> I think Matt feels most at home with Randy Charles. . . . Matt's familiar world is with Randy Charles and his family. I think Matt has suffered a significant number of major losses in his very young life, and I believe that to be moved to New Jersey at this point against his will would constitute another major blow to him, and I would be fearful of the possibility of significant depression. . . . Even as it is now he is a very tense little boy, and I think, more than anything else, he needs stability.

[R.R. 549a]. In his Opinion, Judge Folino found that Dr. Fischer testified "credibly and persuasively that it is Matthew's best interest to remain in the primary custody of Mr. Charles." [Petition Appendix 29a]. As shown above, an examination of Dr. Fischer's testimony of August 15 and 16, 1996, and of January 23, 1997, as well as his written reports submitted as Plaintiff's Exhibits 1 and 20, support Judge Folino's determination in this regard.

Judge Folino also accepted as credible and persuasive the testimony of Jennifer P. LaRosa, a family therapist with whom Matthew treated for about eight months, from October of 1995 through May of 1996. [*See* N.T. of December 12-13, 1996 at S.R.R. 139b, 150b-151b]. Ms. LaRosa is a licensed social worker with a Master's Degree in Social Work. [N.T. of December 12-13, 1996 at S.R.R. 140b].

Ms. LaRosa testified that at the time Matthew began treatment the identified concerns were anxiety behavior, grief issues and oppositional defiant behavior. [N.T. of December 12-12, 1996 at S.R.R. 150b]. Ms. LaRosa testified, "It became clear once I had established a relationship with the child . . . that the child was concerned about abandonment and being removed from his home." [N.T. of December 12-13, 1996 at S.R.R. 151b]. Ms. LaRosa described Matthew as "a little boy who was considerably anxious and had a lot of anxiety reactions," which she attributed not only to the death of Matthew's mother and the loss of his brother and sister [Kim and Kevin], but also to the struggle between Stehlik and Charles for custody of Matthew. [N.T. of December 12-13, 1996 at S.R.R. 156b-157b]. According to Ms. LaRosa, "This was a child that was looking for some security." [N.T. of December 12-13, 1996 at S.R.R. 174b]. Ms. LaRosa testified at some length about Matthew's reactions to incidents which occurred during his visitations with Stehlik that caused Matthew anxiety and feelings of abandonment. [N.T. of December 12-13, 1996 at S.R.R. 156b-160b]. Ms. LaRosa testified that Matthew felt "safe" in his home environment with Charles in the Pittsburgh area. [N.T. of December 12-13, 1996 at S.R.R. 160b].

Ms. LaRosa further testified that by the time she concluded her sessions with Matthew in May of 1996, she felt "very confident [that] Mr. Charles was able to manage this child and the stresses in this child's life and understand the process of grief and what this kid was dealing with." [N.T. of December 12-13, 1996 at S.R.R. 168b]. With respect to how Matthew regarded his relationships with Stehlik and Charles Ms. LaRosa observed:

> . . . this child over a long period of time was able to identify that he viewed Mr. Charles as the parent, the way he identified his mother as the parent. He understood that Mr. Stehlik was his father, but on a day-to-day, who does your laundry, who checks your homework, who talks to the teacher, who takes you to the dentist, who takes your temperature, gives you a Tylenol, he identified Mr. Charles as that person. . . .

[N.T. of December 12-13, 1996, at S.R.R. 179b].

Judge Folino accepted as credible the testimony of Charles, his daughter Jennifer, and several character witnesses who testified on Charles' behalf. Judge Folino specifically found that Charles and Matthew "love each other very much," that Charles "treats Matthew like a son," and that Charles "sincerely believes it is in Matthew's best interest to remain with him." [Petition Appendix 31a].

Judge Folino also accepted as credible the testimony of Diane Stehlik, the sister-in-law of Stehlik, stating that "she credibly testified that Mr. Stehlik has a problem with anger that particularly manifests itself during times of stress or conflict." [Petition Appendix 33a]. Diane Stehlik testified

that she has known the Petitioner, Richard Stehlik, for better than 50 years; that their families had been close all of their lives; that she had been married to Richard Stehlik's brother Tom; and that even after her divorce from Tom she had remained close to Tom and the Stehlik family. [N.T. of August 15-16, 1996, at S.R.R. 92b-93b]. Diane Stehlik is a registered nurse and certified social worker; she worked as a case manager for Bergan County Division of Family Guidance with juveniles and the Juvenile Justice System [N.T. of August 15-16, 1996, at S.R.R. 87b-88b]. Asked to describe Richard Stehlik's character, Diane Stehlik testified:

> I think that Richard is a very lonely, sad and angry man. . . . I think he is inflexible. I think he is rigid. . . . And I think that he has an enormous problem with anger, rage.

[N.T. of August 15-16, 1996 at S.R.R. 97b].

While acknowledging that she had seen Richard Stehlik interacting with Matthew only infrequently, Diane Stehlik testified as to particular incidents she witnessed while Richard Stehlik was married to Linda when he became angry with Kim or Kevin, Linda's children from her first marriage. Diane Stehlik testified to an incident she witnessed in which Richard Stehlik became angry with Kim because a curling iron had been left on the steps, and recalled that Richard Stehlik, "got very loud, angry, red in the face, and threw it at her, hit her with it. The end of the cord made a little red mark on her leg, and he left and went upstairs." [N.T. of August 15-16, 1996 at S.R.R. 107b-108b]. Diane Stehlik also testified about an incident she witnessed in which Richard Stehlik was angry with Linda and Kevin about a pair of sneakers, and hit Kevin on the side of the face with a shoe. [N.T. of August 15-16, 1996 at S.R.R. 108b-109b].

Other witnesses also testified to experiencing or witnessing incidents of anger in their interactions with Richard Stehlik. Dr. Fischer, in his testimony on January 23, 1997, testified about a letter Stehlik sent to him stating, "There are flashes of anger in his letter to me . . . he makes accusations about why have I asked to see the boy again. . . ." [R.R. 543a]. Dr. Fischer also testified at the January 23, 1997 hearing that, in accordance with Judge Folino's Order of December 13, 1996, he contacted Fernando Lorenz, a therapist of Stehlik's, to discuss Stehlik. [R.R. 516a]. Dr. Fischer testified that he asked Lorenz to give his overall impression of Stehlik. According to Dr. Fischer, Lorenz replied that he felt Stehlik genuinely cared for Matthew and did not believe that Stehlik would ever physically hurt Matthew; however, Lorenz also related to Dr. Fischer his belief that Stehlik was "quick to become angry and to become verbally or emotionally abusive. . . ." [R.R. 521a]. In fact, Mr. Lorenz concluded that Richard Stehlik could lash out verbally at him (meaning Matthew) [R.R. 522a].

Another witness, Richard Contini, the drug and alcohol evaluator testified regarding Richard Stehlik's anger and bizarre behavior directed at Mr. Contini during interviews. Mr. Contini is a certified alcohol and drug counselor and has a bachelor's degree in psychology and his master's degree in clinical psychology. [N.T. of deposition of August 1, 1996, at 6]. Mr. Contini described how Richard Stehlik became very angry and suspicious of what I was doing. [N.T. of deposition of August 1, 1996 at 24 and *see* report attached to deposition, Plaintiff's Deposition Exhibit B]. Mr. Contini further described his third interview with Mr. Richards.

> During the third session Mr. Stehlik exhibited a degree of anger I would describe as near rage

when I indicated that Ms. Hassinger had called again. He interrupted me mid-sentence with a barrage of accusations and suspicions. He stated that Ms. Hassinger and I were "in this together," that "you" people were all alike, and made additional vulgar statements about this attorney and his former in-law. He accused me of having spoken to his former sister-in-law without permission, and suggested this evaluation was a sham, a setup, and repeatedly asked why I was doing this to him.

My attempt to address the discrepancies (paternal alcoholism and admission of domestic violence on his part) I noted between information he had provided, and that reported by the A.C.T. program resulted in another outburst of anger in which patient leaped from his chair, paced the floor, and in a loud voice put forth more suspicions and accusations. He denied providing A.C.T. with such information, and said either I was lying, or that false information had been given to A.C.T. by his former in-law, or battered women's groups. He continued on a tirade about women, battered women's groups, shelters, women's liberation movement, therapists, lawyers and courts. He seemed to believe there was a conspiracy afoot to keep him from getting custody of his son.

At one point Mr. Stehlik demanded to know if I were Italian, and then Sicilian, in an accusatory tone, he concluded that I was Sicilian, without my responding to his inquiry. (I have no idea what patient meant by this). Mr. Stehlik further accused

> me of trying to get him into treatment for the purpose of making money. He told me I was the lowest type of person he could imagine, the absolute worst, and utterly disgusting. Mr. Stehlik's tone of voice, demeanor and the look on his face convinced me he meant what he said.
>
> When I indicated that we could conclude the interview, Mr. Stehlik asked if I intended to do more alcohol or drug testing, I told him no, but he continued to inquire about it. I had the sense he wanted to take the tests again, so I offered to do so. He remained uneasy, and with the saliva alcohol test stick in his mouth, he asked if he had to take this test, and I again said no. He then declined to complete the test, took the strip from his mouth, and asked if I intended to tell the truth about any of the test results anyway.

[Report attached to deposition transcript of August 1, 1996, at S.R.R. 21b].

Based on all of the testimony and evidence discussed above, as well as a wealth of testimony and documentary evidence presented in the six days of hearings in this case, Judge Folino ultimately determined:

> After reviewing all the testimony, I determined that it is in Matthew's best interest to remain in Pittsburgh and to have substantial and increasing partial custody with his biological father in New Jersey. Matthew has had such serious and traumatic changes and losses in his life recently, it would not be healthy for him to

> suffer the additional loss of his day-to-day home and father and to be required to move to a new home in New Jersey. There is no question that Matthew would feel safer and happier by staying here in Pittsburgh at the present time. . . . because my focus is on Matthew's best interest, I have no hesitancy in finding that Matthew should remain in the primary custody of his step-father.

[Petition Appendix 35a-36a].

Thus, Judge Folino in this case: applied the correct legal standard; recognized that Stehlik, as the natural father, has a prima facie right to an award of custody under Pennsylvania law; determined, as detailed in his Opinion and supported by portions of the testimony and evidence highlighted in this Brief, that the evidence in this case presented compelling and convincing reasons why Charles should be awarded custody; and determined that an award of custody to Charles would be in Matthew's best interest. Judge Folino committed no legal error. Accordingly, his decision to award custody of Matthew to Charles was properly affirmed by the Superior Court of Pennsylvania and the Supreme Court of Pennsylvania, and should not be disturbed by this Honorable Court.

CONCLUSION

The Supreme Court of Pennsylvania properly and correctly applied Pennsylvania law in its review of this case. Trial Judge Folino carefully reviewed the testimony in his Opinion, and the record bears out his determinations and findings. None of the allegations of error made by Stehlik are substantiated by the record. Accordingly, the thorough and well-reasoned determination and order of the trial court, awarding primary custody of Matthew to Charles, was properly affirmed by the Superior Court of Pennsylvania and the Supreme Court of Pennsylvania, based solely on Pennsylvania law.

No Federal question is presented in this custody case. There are no grounds or compelling reasons to warrant further review of this case by the Supreme Court of the United States. Accordingly, Stehlik's Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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